



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2019-0892

RIN 1625-AA09

Drawbridge Operation Regulation; Hackensack River, Jersey City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to modify the operating schedules that govern the Route 1 & 9 Bridge, mile 1.8, and Route 7 Bridge, mile 3.1, both crossing the Hackensack River, at Jersey City, NJ. The bridge owner, the New Jersey Department of Transportation (NJDOT), submitted a request to allow two hours advance notice for nighttime transits due to infrequent bridge openings. This proposed rule would align the advance notice requirement for the PATH Bridge at mile 3.0.

DATES: Comments and related material must reach the Coast Guard on or before [INSERT 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2019-0892 using the Federal eRulemaking Portal at <http://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the

SUPPLEMENTARY INFORMATION section below for instructions on

submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Judy Leung-Yee, Project Officer, First Coast Guard District; telephone 212-514-4336, e-mail Judy.K.Leung-Yee@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
NJDOT	New Jersey Department of Transportation
DHS	Department of Homeland Security
FR	Federal Register
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code

II. Background, Purpose and Legal Basis

The Route 1 & 9 Bridge at mile 1.8 over the Hackensack River at Jersey City, New Jersey, has a vertical clearance of 35 feet at mean high water and 40 feet at mean low water. Horizontal clearance is approximately 200 feet. The waterway users include recreational and commercial vessels including tugboat/barge combinations.

The Route 7 Bridge at mile 3.1 over the Hackensack River at Jersey City, New Jersey, has a vertical clearance of 35 feet at mean high water and 40 feet at mean low water. Horizontal clearance is approximately 158 feet. The waterway users include recreational and commercial vessels including tugboat/barge combinations.

The existing regulation, 33 CFR 117.5, requires both bridges open on signal at all times. NJ DOT has requested that overnight hours between 11 p.m. and 7 a.m.

be modified to two hours advance notice. This rule change will allow for more efficient and economic operation of the bridge while meeting the reasonable needs of navigation. The Coast Guard is proposing this rulemaking under authority in 33 U.S.C. 499.

III. Discussion of Proposed Rule

The bridge logs show that between 11 p.m. and 7 a.m., the Route 1 & 9 Bridge had 27 annual openings in 2017, 12 annual openings in 2018, and 11 annual openings to date in 2019 (through October). During the subject hours, the Route 7 Bridge had 16 annual openings in 2017, 1 annual opening in 2018, and 0 annual openings to date in 2019. The Coast Guard proposes to permanently modify the operating regulation.

The proposed rule would allow that both Route 1 & 9 and Route 7 Bridges shall open on signal; except that, from 11 p.m. to 7 a.m., the draw shall open on signal if at least two hours advance notice is given by calling the number posted at the bridge. It is the Coast Guard's opinion that the proposed rule meets reasonable needs of marine traffic.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and

benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed the NPRM and pursuant to OMB guidance, it is exempt from the requirements of Executive Order 13771.

The Coast Guard believes this rule is not a significant regulatory action. The bridges will still open for all vessel traffic after a two-hour advance notice is given during overnight periods. The vertical clearance under both bridges in the closed position are relatively high enough to accommodate most vessel traffic. We believe that this proposed change to the drawbridge operation regulations at 33 CFR 117.723 will meet the reasonable needs of navigation.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

The Route 1 & 9 and Route 7 Bridges provide 35 feet of vertical clearance

at mean high water that should accommodate all the present vessel traffic except deep draft vessels. The bridges will continue to open on signal for any vessel, except between 11 p.m. and 7 a.m. when a two-hour advance notice will be required. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A., above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, (Federalism), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure

by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01, and Environmental Planning COMDTINST 5090.1 (series), which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f). We have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally, this action is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal e-Rulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacynotice>.

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1.

2. In § 117.223, add paragraphs (j) and (k) to read as follows:

§ 117.723 Hackensack River.

(j) The draw of the Route 1 & 9 Bridge, mile 1.8, at Jersey City, shall open on signal; except that, from 11 p.m. to 7 a.m., the draw shall open on signal if at least two hours advance notice is given by calling the number posted at the bridge.

(k) The draw of the Route 7 Bridge, mile 3.1, at Jersey City, shall open on signal; except that, from 11 p.m. to 7 a.m., the draw shall open on signal if at least two hours advance notice is given by calling the number posted at the bridge.

Dated: December 5, 2019

R.W. Warren
Captain, U.S. Coast Guard,
Acting Commander, First Coast Guard District.
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